IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SALES TAX REFERENCE No. 3 of 1995
With
SALES TAX REFERENCE No. 8 of 1995
With
SALES TAX REFERENCE No. 10 of 1995

For Approval and Signature:

HON'BLE MR.JUSTICE B.J.SHETHNA
HON'BLE MR.JUSTICE M.C.PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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COMMISSIONER OF SALES TAX - Appellant(s)

Versus

GANGADAS MULJIBHAI VAVDI - Respondent(s)

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Appearance :
MR SIRAJ GORI, AGP for Appellant No(s).: 1.
SERVED BY RPAD - (N) for Respondent No(s).: 1.
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CORAM :HON'BLE MR.JUSTICE B.J.SHETHNA and
HON'BLE MR.JUSTICE M.C.PATEL

Date : 05/07/2005

COMMON ORAL JUDGMENT (Per : HON'BLE MR.JUSTICE B.J.SHETHNA)

M/s. Gangadas Muljibhai filed two Second Appeals No.29

and 30 of 1987. M/s. Ladhabhai Govindbhai filed three Second Appeals No.31, 32 and 33 of 1987 and M/s. Nagindas Gangjibhai filed two Second Appeals No.34 and 35 of 1987 before the Gujarat Sales Tax Tribunal at Ahmedabad (for short, 'the Tribunal'). Second Appeal No.30 of 1987 was filed by M/s. Gangadas Muljibhai for the assessment of Samvat year 2040. Second Appeals No. 31, 32 and 33 of 1987 were filed by M/s. Ladhabhai Govindbhai for the assessment of Samvat years 2038, 2039 and 2040 respectively. Second Appeals No.34 and 35 of 1987 were filed by M/s. Nagindas for the assessment of Samvat years 2039 and 2040 respectively. In all these appeals, common question of law was involved regarding remission of tax payable by the appellants on resale of oil cakes purchased by the appellants from registered dealers who were wholesalers after paying tax on it.

2. All the appellants were carrying on the business of reselling oil cakes, cotton seeds, food-grains etc. They were registered dealers under the provisions of Gujarat Sales Tax Act, 1969 (for short, 'the Act'). During the respective years stated hereinabove, they purchased oil cakes from registered dealers after paying full tax thereon

in accordance with law to their selling dealers. Till December 23, 1981, oil cakes could be purchased in this manner by the dealers without furnishing any declaration in any form. However, on December 23, 1981, the State Government added Section 19A in the Act providing that if such oil cakes were purchased against Form provided in Section 19A viz. Form 24, then the said amount shall not be calculated in the turnover of purchases of the purchasing dealer. It was also provided that if the reseller, resells oil cakes after furnishing a similar declaration in Form 24-A from the person to whom he resells the cakes, then the amount will be excluded from the turnover of sales also. Thus, in other words, tax on the sale of oil cakes was made payable at the last stage.

2.1 In the instant case, the appellants had purchased oil cakes from their selling dealers without furnishing any declaration in Form 24-A but after paying full amount of tax to their selling dealers.

3. At the time of assessment, the appellants had submitted before the Sales Tax Officer (S.T.O.) that no sales tax could be levied from them on their resale of the

oil cakes as they had already once paid the sales tax to their selling dealers when the oil cakes were purchased by them during the respective assessment years. However, the S.T.O. did not accept their contention and again levied sales tax on the resale of oil cakes. Aggrieved of this, they preferred First Appeals before the Assistant Commissioner of Sales Tax but the same were dismissed by the Assistant Commissioner by rejecting their contention that due to ignorance of law, they did not make purchase of the oil cakes against the declaration in Form 24-A, though they had actually paid the tax at the time of purchase made by them and, therefore, the tax on resale should be remitted. The Assistant Commissioner has also rejected their contention that if they were directed to pay sales tax on the resales, then it would amount to double taxation as they had already once paid the tax at the time of purchasing oil cakes and now they were again required to pay sales tax on the resales. The orders passed by the S.T.O. and Assistant Commissioner were challenged by the appellants in Second Appeals before the learned Tribunal.

4. Before the learned Tribunal, the following common question of law was raised:

> "Whether the appellants were entitled to remission of payment of sales tax on the resales of oil cakes made by them, on the ground that they have already once paid the sales tax legally payable at the time of purchasing oil cakes and if sales tax is levied on resales, then they would be put to the jeopardy of double taxation?"

The learned Tribunal clearly found out that all the appellants were registered dealers and they had purchased oil cakes from the registered dealers and all of them have paid legitimate sales tax to their selling dealers when the oil cakes in question were purchased. In December, 1981, new Section 19A was added in the Act and the provision was made that if such dealers purchase oil cakes against declaration under Form 24-A, then the purchase to the extent of that amount should be excluded from their turnover of purchases and if such dealers resell such oil cakes to registered dealers after obtaining declaration in Form 24-A, then the sale should be excluded from the turnover of their sales. The learned Tribunal then observed that the appellants had purchased oil cakes from registered dealers but without furnishing declaration in Form 24-A and they resold the oil cakes to unregistered

dealers. Therefore, there was no question of obtaining declaration in Form 24-A from those unregistered purchasers. The learned Tribunal further held that if the appellants were directed to pay sales tax on the resale of oil cakes to the unregistered purchasers then it would amount to double taxation. Relying on its previous decision dated 26th December, 1986 rendered in Appeals No.3 to 8 of 1986 in similar type of group matters of **M/s. PRABHUDAS MANGALDAS AND OTHERS vs. THE STATE OF GUJARAT**, the learned Tribunal held that it amounts to double taxation. Accordingly, the learned Tribunal allowed all the appeals and set aside the impugned orders passed by the S.T.O. and confirmed in appeals by the Assistant Commissioner and directed that the sales tax that would otherwise be payable by the appellants on the resales of oil cakes to unregistered dealers without obtaining declaration in form 24-A be remitted after verifying that the appellants had already paid sales tax to their selling dealers when the appellants had made purchases from them. Against this impugned common judgment and order dated 12th February, 1987 passed by the learned Tribunal in aforesaid 7 appeals, Reference Applications No.22 and 22-A of 1989 were made in the case of M/s. Gangadas Muljibhai in Second

Appeals No.29 and 30 of 1987, Reference Applications No.23, 24 and 25 of 1989 were made in the case of M/s. Ladhabhai Govindbhai in Second Appeals No.31, 32 and 33 of 1987 and Reference Applications No.26 and 27 of 1989 were made in the case of M/s. Nagindas Gangjibhai in Second Appeals No.34 and 35 of 1987 before the learned Tribunal by the State of Gujarat for making reference to this court under Section 69 of the Act. Accordingly, the learned Tribunal, by its order dated 01st July, 1994, raised the following two questions and sent it to this court for its decision

(1) Whether on the facts and in the circumstances of the case, the Gujarat Sales Tax Tribunal was justified in exercising the powers of remission under the provisions of Section 55(2) of the Gujarat Sales Tax Act, 1969, even when the opponent concerned had not preferred any application for remission to the Commissioner of Sales Tax – and as far as Second Appeal NO.34 of 1987, opponent, M/s. Nagindas, is concerned, is such an application was preferred, then, even if such an application was still not decided by the Commissioner of Sales Tax?

(2) Whether on the facts and in the circumstances of the mattes, the Gujarat Sales Tax Tribunal was right in law in allowing all the second appeals preferred by the present opponents and in directing that the sales tax that would otherwise be payable by the present opponents on the resales of oil cakes to unregistered dealers in Form 24A, shall be remitted after verifying that the present opponents have already paid sales tax to their selling dealers, when the present opponents had made purchases from them?

5. It is surprising to note that though there were 7 Second Appeals before the learned Tribunal and 7 Reference Applications were there for making reference to this court under Section 69 of the Act, there are only three Sales Tax References No.3, 8 and 10 of 1995 in the case of M/s. Gangadas Muljibhai, M/s. Ladhabhai Govindbhai and M/s. Nagindas Gangjibhai. There should have been 7 references. Be that as it may.

6. Having heard learned AGP Shri Gori, we are of the considered opinion that both the questions are required to be answered in affirmative for the following reasons.

6.1 It is not in dispute that there is a provision of remission under Section 55 of the Act. It is hardly material that an application for remission to the Commissioner of Sales Tax was made or not in one or two cases. If the powers were there, then they were to be exercised in accordance with law. From the entire record of the case, it is clear that the fact which is not in dispute is that they had already paid the tax. If the tax were paid once, then it was not proper on the part of the

State Government to again ask for tax and deny the benefit of remission on the ground that it was no in Form 24-A. If the contention of the State Government is allowed on this ground that there was a breach of amended Section 19A of the Act, then it would amount to double taxation, which is not permissible under the law. In the case of **AVNI UNDERWEAR COMPANY vs. THE STATE OF GUJARAT** [Sales Tax Reference Nos. 1 and 15 of 1990 decided on 15th January, 1993 (G.S.T.B.A. I, 1993 (H.C.) Page 85)], the Court held that the Tribunal was justified in upholding the contention that the provisions of Section 55 of the Act read with Rule 49 of the Rules, contemplates the reasons to be given while disposing of an application for remission of tax but the jurisdiction initially always vests in the Commissioner of Sales Tax and the Tribunal, on its own, straightaway cannot exercise such jurisdiction. However, once the Commissioner of Sales Tax fails to exercise his jurisdiction and if the matter comes before the Tribunal, then we are of the considered opinion that the Tribunal was fully justified in exercising its jurisdiction in favour of the appellants.

7. In view of the above discussion, both the questions

in all these References are decided in affirmative. Order accordingly.

(B.J. Shethna, J.)

(M.C. Patel, J.)

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